

Introduced by Senator Negrete McLeod

February 18, 2011

An act to amend Section 1420 of, and to add Section 1428.3 to, the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 799, as introduced, Negrete McLeod. Long-term care.

Existing law establishes the State Department of Health Care Services and sets forth its powers and duties, including, but not limited to, the licensing and regulation of health facilities, with certain exceptions.

Existing law, the Long-Term Care, Health, Safety, and Security Act of 1973, in part, requires the department to investigate complaints relating to long-term health facilities, as defined.

This bill would require the department, with certain exceptions, to complete its investigation within 90 working days. The bill would require the department to assess its compliance with this requirement in prescribed annual reports to the Legislature.

Existing law authorizes a complainant who is dissatisfied with the department's inspection or investigation to, within 5 business days, notify the director in writing of his or her request for an informal conference.

This bill would change that time period from 5 business days to 15 working days.

Existing law requires a miniexit conference to be held with the administrator or his or her representative upon leaving the facility at the completion of the investigation to inform him or her of the status of the investigation.

This bill would, instead, require a miniexit conference to be held upon leaving the facility and at the completion of the investigation.

This bill would require the department, or its designee, to conduct a citation review conference within 60 working days of the facility request, and require the hearing officer to issue the decision within 30 working days of the citation review conference. The bill would require the department to contract with prescribed entities for the conduct of the hearings, if it is unable to meet these timeframes.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1420 of the Health and Safety Code is
2 amended to read:

3 1420. (a) (1) Upon receipt of a written or oral complaint, the
4 state department shall assign an inspector to make a preliminary
5 review of the complaint and shall notify the complainant within
6 two working days of the receipt of the complaint of the name of
7 the inspector. Unless the state department determines that the
8 complaint is willfully intended to harass a licensee or is without
9 any reasonable basis, it shall make an onsite inspection or
10 investigation within 10 working days of the receipt of the
11 complaint. In any case in which the complaint involves a threat of
12 imminent danger of death or serious bodily harm, the state
13 department shall make an onsite inspection or investigation within
14 24 hours of the receipt of the complaint. In any event, the
15 complainant shall be promptly informed of the state department's
16 proposed course of action and of the opportunity to accompany
17 the inspector on the inspection or investigation of the facility. Upon
18 the request of either the complainant or the state department, the
19 complainant or his or her representative, or both, may be allowed
20 to accompany the inspector to the site of the alleged violations
21 during his or her tour of the facility, unless the inspector determines
22 that the privacy of any patient would be violated thereby.

23 (2) When conducting an onsite inspection or investigation
24 pursuant to this section, the state department shall collect and
25 evaluate all available evidence and may issue a citation based
26 upon, but not limited to, all of the following:

- 27 (A) Observed conditions.
28 (B) Statements of witnesses.
29 (C) Facility records.

1 (3) *The department shall complete its investigation within 90*
2 *working days from receipt of the complaint and the department*
3 *shall issue a citation within the mandatory timeframes established*
4 *pursuant to Section 1423, including, but not limited to, serving the*
5 *citation upon the licensee within three days after completion of*
6 *the investigation, excluding Sundays and holidays, unless the*
7 *licensee agrees in writing to an extension of time. The*
8 *90-working-day period may be extended if the department has*
9 *exercised reasonable diligence in attempting to, but has not been*
10 *able to, obtain all necessary evidence related to the investigation.*
11 *The department shall analyze its compliance with this requirement*
12 *in its annual system and staffing analysis prepared pursuant to*
13 *subparagraph (B) of paragraph (2) of subdivision (d) of Section*
14 *1266.*

15 ~~(3)~~

16 (4) Within 10 working days of the completion of the complaint
17 investigation, the state department shall notify the complainant
18 and licensee in writing of the department's determination as a
19 result of the inspection or investigation.

20 (b) Upon being notified of the state department's determination
21 as a result of the inspection or investigation, a complainant who
22 is dissatisfied with the state department's determination, regarding
23 a matter which would pose a threat to the health, safety, security,
24 welfare, or rights of a resident, shall be notified by the state
25 department of the right to an informal conference, as set forth in
26 this section. The complainant may, ~~within five business~~ *15 working*
27 *days* after receipt of the notice, notify the director in writing of his
28 or her request for an informal conference. The informal conference
29 shall be held with the designee of the director for the county in
30 which the long-term health care facility which is the subject of the
31 complaint is located. The long-term health care facility may
32 participate as a party in this informal conference. The director's
33 designee shall notify the complainant and licensee of his or her
34 determination within 10 working days after the informal conference
35 and shall apprise the complainant and licensee in writing of the
36 appeal rights provided in subdivision (c).

37 (c) If the complainant is dissatisfied with the determination of
38 the director's designee in the county in which the facility is located,
39 the complainant may, within 15 days after receipt of this
40 determination, notify in writing the Deputy Director of the

1 Licensing and Certification Division of the state department, who
2 shall assign the request to a representative of the Complainant
3 Appeals Unit for review of the facts that led to both determinations.
4 As a part of the Complainant Appeals Unit's independent
5 investigation, and at the request of the complainant, the
6 representative shall interview the complainant in the district office
7 where the complaint was initially referred. Based upon this review,
8 the Deputy Director of the Licensing and Certification Division
9 of the state department shall make his or her own determination
10 and notify the complainant and the facility within 30 days.

11 (d) Any citation issued as a result of a conference or review
12 provided for in subdivision (b) or (c) shall be issued and served
13 upon the facility within three working days of the final
14 determination, unless the licensee agrees in writing to an extension
15 of this time. Service shall be effected either personally or by
16 registered or certified mail. A copy of the citation shall also be
17 sent to each complainant by registered or certified mail.

18 (e) A miniexit conference shall be held with the administrator
19 or his or her representative upon leaving the facility *and* at the
20 completion of the investigation to inform him or her of the status
21 of the investigation. The department shall also state the items of
22 noncompliance and compliance found as a result of a complaint
23 and those items found to be in compliance, provided the disclosure
24 maintains the anonymity of the complainant. In any matter in which
25 there is a reasonable probability that the identity of the complainant
26 will not remain anonymous, the state department shall also notify
27 the facility that it is unlawful to discriminate or seek retaliation
28 against a resident, employee, or complainant.

29 (f) For purposes of this section, "complaint" means any oral or
30 written notice to the state department, other than a report from the
31 facility of an alleged violation of applicable requirements of state
32 or federal law or any alleged facts that might constitute such a
33 violation.

34 SEC. 2. Section 1428.3 is added to the Health and Safety Code,
35 to read:

36 1428.3. (a) If the licensee desires to contest a citation or the
37 proposed assessment of a civil penalty therefor pursuant to Section
38 1428, the department, or its designee, shall conduct a citation
39 review conference within 60 working days from the date of the
40 facility's request for a citation review conference. The hearing

1 officer shall issue the decision within 30 working days of the
2 citation review conference.

3 (b) If the department cannot meet the timeframes required under
4 subdivision (a), the department shall contract with either the Office
5 of Administrative Hearings, an entity that has been designated as
6 a Medicare Quality Improvement Organization, or another state
7 agency to ensure that citation review conferences are conducted
8 within 60 working days from the date of the facility's request.

9 (c) From the amounts collected for facility license fees pursuant
10 to Section 1266, the department may, upon appropriation by the
11 Legislature, transfer an amount necessary to cover the cost of
12 having another state agency conduct the citation review conference
13 hearings.

14 (d) In its annual system and staffing analysis prepared pursuant
15 to subparagraph (B) of paragraph (2) of subdivision(d) of Section
16 1266, the department shall analyze its compliance with subdivision
17 (a) and the outcome of contested citations at the hearings,
18 including, but not limited to, the number of citations that have
19 been upheld, modified, and dismissed, aggregated by class of
20 citation.